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Human rights defenders

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report submitted by Hina Jilani, his Special Representative on Human Rights Defenders, in accordance with General Assembly resolution 57/209 of 18 December 2002 (see annex).

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Annex

Report of the Special Representative of the Secretary-General on Human Rights Defenders, in accordance with General Assembly resolution 57/209

Summary

In her third annual report to the General Assembly (see annex), the Special Representative on Human Rights Defenders addresses two related concerns: the use of security legislation against human rights defenders and the role and situation of human rights defenders in emergencies.

Section II of the report provides a brief profile of security legislation; while the Special Representative's primary focus is on national security legislation, she also considers it important to examine related United Nations resolutions. She describes general trends indicating a significant increase in the use of security legislation, including in counter-terrorism policies and actions. In the light of the rights provided for in the Declaration on human rights defenders, the report then describes how security legislation has been used to limit the possibilities for defenders to conduct their human rights work and how such legislation has sometimes been used directly against defenders themselves. The Special Representative draws attention to, among other things, violations of defenders' rights to freedom of association, freedom of expression and access to information, and gives examples of the arbitrary arrest and detention, prosecution, conviction and sentencing of defenders, all under security legislation provisions. The Special Representative notes that these restrictions on defenders have been justified as measures to improve security and support counter-terrorism, while in many cases the actual objective has clearly been to conceal human rights abuses that defenders would otherwise have investigated and revealed, or to punish defenders for their human rights work and to discourage others from continuing it.

Section III describes the essential role of human rights defenders in the context of emergency situations, including armed conflicts. The Special Representative describes how, at times when human rights are violated and at risk on a massive scale, when work to monitor and protect human rights is most urgent, defenders are often prevented by some State and non-State actors from having access to the victims of violations or places where violations are occurring. She notes with deep concern that in these emergencies defenders are themselves targeted and are increasingly the victims of killings, torture, arrest, detention and other acts as a direct response to their human rights work. Section III concludes by emphasizing the importance for the international community, and the United Nations in particular, of the work conducted by human rights defenders in emergencies: helping to prevent emergencies and to limit their adverse impact upon human rights; informing the Security Council and international human rights mechanisms of developing situations; and supporting international action to find an early solution to the negative human rights consequences of emergencies.

Section IV examines the Declaration on human rights defenders in the context of both security legislation and emergencies and interprets the Declaration in the

light of the wider international human rights legal framework. The Special Representative indicates firmly that derogation from the Declaration's provisions — preventing defenders from conducting their human rights work at precisely the times when monitoring respect for human rights standards is most needed (during the application of broad security legislation and during emergencies) — is contrary to the spirit of both the Declaration and other international human rights instruments.

Section V provides a brief conclusion and defines priority recommendations addressed to States, the United Nations, regional bodies, the media and defenders themselves.

While recognizing and supporting the imperative need for States to ensure security and to end terrorism, including in the context of emergencies, throughout her report the Special Representative expresses deep concern that actions against defenders weaken accountability for human rights violations, contribute to impunity and can lead to a worsening of emergencies and the perpetuation of human rights abuses. She notes that some actions currently being taken against defenders through the use of security legislation and in emergency situations constitute deplorable violations of international human rights law, are extremely damaging to international peace and security and are in fact harmful to counter-terrorism efforts. The Special Representative calls upon States and the United Nations to urgently adopt policies to implement the Secretary-General's commitment to the protection of human rights not only as an objective of national security and counter-terrorism actions but also as a means to attain these goals. Human rights defenders are, by definition, key partners in such a commitment.

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I. Introduction

1. The present report is the third submitted to the General Assembly by the Special Representative of the Secretary-General on Human Rights Defenders, pursuant to Commission on Human Rights resolutions 2000/61 of 26 April 2000 and 2003/64 of 24 April 2003 and General Assembly resolution 56/163 of 19 December 2001. Since her appointment, in 2000, the Special Representative has submitted three annual reports[a] to the Commission, including reports on country visits to Kyrgyzstan,[b] Colombia[c] and Guatemala.[d] In 2004 she expects to present to the Commission two additional reports on country visits conducted in 2003, to the former Yugoslav Republic of Macedonia and Thailand, together with a fourth annual report. In all of her reports, the Special Representative's analysis, conclusions and recommendations are consistently linked with her mandate to support implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms[e] (Declaration on human rights defenders).

2. Section II of the present report examines the impact of security legislation on human rights defenders, and section III looks at the role and situation of human rights defenders working in the context of emergencies, such as armed conflicts. The Special Representative's concerns with regard to security legislation and emergencies are from three perspectives:

(a) The use of security legislation to impose restrictions on judicial review and to maximize executive power and control over access to information. Diminishing the scope for transparency and accountability has, in particular, impeded advocacy and monitoring functions of human rights defenders;

(b) The adoption of practices by State agencies and non-State actors that increase risks for human rights defenders in carrying out their human rights work during states of emergency;

(c) The use of security legislation to target defenders themselves as a measure to intimidate or harass them or deter them from criticizing or exposing human rights violations that result from the resort to exceptions under the pretext of emergency, State sovereignty or national security requirements.

3. Section IV examines the Declaration on human rights defenders in the context of security legislation and emergencies, and section V presents conclusions and recommendations.

II. Security legislation

A. Security legislation and human rights defenders: trends and context

4. Legislation of specific concern to the Special Representative in the context of the work of human rights defenders and the effective implementation of the Declaration existed in many national legal jurisdictions long before the current global adoption of security driven measures. In the wake of the terrorist attacks of 11 September 2001, however, many Governments have drafted, adopted or

reactivated security legislation, leading to an apparent growth in the number and variety of security-related rules. In parallel, since 11 September 2001, security has become a declared priority on many international and national agendas, to the extent that calls for the application of security legislation are made in a widening number and range of situations.

5. The menace of terrorism poses a serious threat to peace and security, and acts of terrorism have frequently targeted human rights defenders advocating the promotion and protection of human rights. The Special Representative recalls with deep regret the loss of Sergio Viera de Mello, Special Representative of the Secretary-General for Iraq and United Nations High Commissioner for Human Rights. The terrorist attack on the United Nations compound in Iraq is yet another manifestation of that which seeks to destroy the values of humanity, and presents a serious challenge to those striving for sustainable peace through the promotion and preservation of human rights in the midst of conflict and strife.

6. Those striving for the rights of minorities or women, advancing the cause of religious tolerance and accommodation of ethnic or racial diversity, or resisting trends of ultranationalism have been some of the first victims of forms of extremism that have become the major cause of terrorism. They have also been in the front line to combat these trends in order to preserve the norms of peace and democracy, as conditions that are fundamental for the promotion, protection and enjoyment of human rights. The struggle of human rights defenders against terrorism precedes the events of 11 September 2001 and has been a visible human rights activity in parts of the world where the roots of terrorism are strongest. Security or counter-terrorism measures that strengthened prospects for the enjoyment of human rights and that conformed to the internationally accepted norms on which notions of rule of law are based would therefore not be impediments to the defence of human rights.

7. The Special Representative is well aware that the adoption of measures to guarantee the security of citizens falls within the ambit of State responsibility. The international community, for its part, is committed under the Charter of the United Nations to take collective measures for the prevention and removal of threats to peace and security. The concerns expressed by the Special Representative in the present report regarding the enforcement and application of security legislation in general or special measures for countering terrorism take this aspect of State and international responsibility fully into account. However, as the Special Representative has emphasized in her earlier reports to the General Assembly and the Commission on Human Rights, laws, policies, and practices that disregard or undermine human rights norms are proving counter productive in the context of the objective of ensuring security at the national or global level. Such measures in themselves contribute to an unstable political climate in which human rights violations are occurring with alarming frequency and with a regrettable degree of acceptance and condonation. In this environment, human rights activity is not expected to have the desired impact on political, social and economic conditions, and human rights defenders cannot garner the support they need to strengthen respect for human rights. These circumstances have increased the vulnerability of human rights defenders engaged individually, or through a variety of movements, in the promotion of political, social, economic and cultural rights.

8. From the analysis of the extensive information received by the Special Representative, it is clear that, in many States, the scope of security legislation

exceeds the legitimate objective of strengthening security. Many security-related rules extend special powers to State authorities and often also limit judicial review and other guarantees of the protection of human rights. The breadth of some security-related legislation is such that, when abused, these instruments can themselves be used as tools of State terror. In an environment in which formal guarantees of human rights protection have decreased, human rights defenders play an important role in monitoring the use of security legislation and exposing deviations from human rights norms. Human rights defenders protesting or criticizing the enforcement of laws, implementation of policies or adoption of practices that infringe fundamental freedoms and violate human rights have themselves been targeted through the use of security legislation in many States. With the imperatives of security used as a shield, activities protected by the Declaration have been criminalized and prosecuted. Human rights defenders are finding it increasingly difficult to carry out their monitoring and advocacy functions safely and without impediment.

B. Profile of security legislation

9. The Special Representative uses the term "security legislation" in a broad sense to refer to laws, decisions and other measures of a legally binding character that purport to protect public or State security or to protect against deeds such as acts of terrorism. The Special Representative also extends her concern to policies that influence the way in which security legislation is used. Most commonly, these legally binding measures are contained in domestic legislative instruments bearing titles such as "national security act", "public security act", "prevention of terrorism act", etc. It is also common to find provisions referring to national security, which have been used against human rights activity, in articles within legal instruments that are not explicitly focused on security — for example, laws on the establishment and registration of associations or on the organization and holding of public demonstrations.

10. The term "security legislation" is also used here to refer to security-related measures that are promulgated without passing through a legislative body, but that can nevertheless be enforced by the police and courts. Administrative measures, for example, are frequently used to limit the action of human rights defenders, in the name of security. Executive orders, such as presidential decrees or presidential ordinances, have also been applied to the detriment of the work of human rights defenders.

11. A key problem with the application of security legislation against defenders is the use of vague and imprecise definitions in the legislation itself that allow varying interpretations based far more on government policy than on objective legal correctness. Vague language has paved the way for the criminalization of certain types of human rights activity. In some States, this has resulted in the use of security legislation to persecute defenders who criticize the Government or who have taken peaceful action in favour of democratization, minority rights or self-determination.

12. A pernicious characteristic of the use of domestic legislation to obstruct the work of human rights defenders, in violation of the Declaration, is that it places defenders in an illegal situation under domestic law, making them liable to prosecution. In many instances the cover of "reasonable restrictions" has been used

by States to enforce laws and adopt policy or administrative measures that curtail rights in a manner that tends, and for purposes that tend, to destroy the very existence of the rights whose restriction is sought. Furthermore, the use of such legislation in some of the cases brought to the attention of the Special Representative indicates no nexus of these restrictions to any legitimate security objective.

C. Security legislation provisions affecting the rights protected in the Declaration on human rights defenders

13. The cases communicated to the Special Representative indicate how a number of features common to many security laws have been used to obstruct the work of human rights defenders, in violation of the standards defined in both the Declaration on human rights defenders and other international human rights instruments. The Special Representative identifies her concerns here in terms of rights essential to the work and safety of defenders and in terms of corresponding violations. Information on these concerns has emerged from States where an existing body of security legislation has been revived and is now being implemented in a manner that is detrimental to the work of defenders. In addition, some States have, in the past two years, introduced new and broad security legislation as part of a more recent declared commitment to strengthen security and combat terrorism. While the full impact of very new legislation is yet to be seen, some cases now emerging show a great potential for these very broad security provisions to be used against human rights defenders in the future. The violations referred to below are not occurring in every State with security legislation, but nevertheless in a large number of States in many regions, suggesting a clear and disturbing pattern.

1. Access to information

14. Access to information is indispensable for the work of human rights defenders. In its articles 6 and 14 the Declaration seeks to protect the monitoring and advocacy functions of defenders by recognizing their right to obtain and disseminate information relevant to the enjoyment of human rights.

15. In many States, provisions of laws on internal security, official secrets and sedition, among others, have been used to deny freedom of information to defenders and to prosecute them for their efforts to seek and disseminate information on the observance of human rights standards. For example, on the basis of the need to ensure national security and promote counter-terrorism, defenders' access to detainees held on terrorism charges has been limited; their attempts to monitor human rights in terrorism trials have been thwarted; and efforts to gather human rights-related information in areas of conflict have been obstructed; among others. Since 11 September 2001, the executive in many countries has adopted a higher level of secrecy, sometimes even in instances other than those involving terrorism. There are cases in which the executive, after designating detainees as terrorists, has refused to share information or to provide evidence to support that designation, even to the legislature and courts. At the same time, laws on freedom of information that were adopted to ensure government accountability are now being more restrictively interpreted.

16. With insufficient information, defenders' capacity to analyse and draw conclusions on particular human rights situations is severely limited. Further, by preventing defenders from obtaining information on respect for human rights, States are effectively limiting their accountability for abuses and damaging the transparency of their governance.

2. Freedom of expression

17. Despite protection under international and regional human rights instruments[f] and national constitutions, the right to freedom of expression has suffered the most severe adverse impact of restrictions imposed by national security or anti-terrorism laws. The information received by the Special Representative contains many examples of how these laws have been used to criminalize accepted forms of dissent and suppress the right to hold Governments accountable.

18. Those exposing human rights violations by the State, insisting on transparency or demanding accountability have been particularly targeted. Laws restricting printing and publication have been used to curtail the freedom of the press. Journalists have been prosecuted for exposing corruption, flaws in governance and human rights abuses. Information on HIV/AIDS, reports of alleged human rights abuses by members of a governing political party or statements critical of the human rights impact of government security policies have all been claimed by States to be information whose publication is a threat to national security. In one country a report on the situation of human rights was proscribed as "anti-government literature". In another, the publication of a translation of the Universal Declaration of Human Rights led to criminal prosecution. Any opinion perceived to differ from State ideology has also been branded as a security concern and used as a justification for the repression of defenders' freedom of expression.

19. Security legislation has been used by Governments to justify the censorship of such human rights-related information and as a basis for retaliation against defenders. Charges have included "defamation of authorities", "spreading false information liable to disturb public order", insulting the security forces, tarnishing the image or reputation of the State and sedition, all of which have been portrayed as damaging national security. Offenders have been fined, arrested, detained, subjected to criminal prosecution and sentenced to very long terms of imprisonment.

20. Inevitably, abuses of defenders' right to freedom of expression is increasingly leading to self-censorship, as defenders determine that their position is no longer sufficiently secure for them to publish human rights information. The sense of insecurity is compounded further when authorities publicly denigrate the work of defenders as irrelevant, harmful to efforts to combat terrorism, unpatriotic or disloyal.

3. Freedom of association

21. The right to freedom of association provides a platform for the work of human rights defenders and is protected in article 22 of the International Covenant on Civil and Political Rights and a number of regional instruments. Article 5 of the Declaration on human rights defenders provides that "For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right ... to form, join and participate in non-governmental organizations, associations or groups".

22. As indicated in cases submitted to the Special Representative, security legislation is being increasingly used to justify a refusal to register organizations and individuals conducting human rights work. In some instances, States have introduced registration requirements where none formerly existed. When human rights defender organizations, some of which have been active for many years within these States, have attempted to register themselves, their applications have been refused by authorities citing national security concerns. Refusals sometimes refer to security provisions contained in administrative rules on the registration of associations and organizations or to the security provisions of an executive order. Typically, no further explanation is given as to why or how the human rights defender organization in question is a threat to national security, making it difficult for defenders to challenge the refusal. When the defenders choose to continue their activity without being registered, they fall into a situation of illegality and become vulnerable to prosecution. The Special Representative has been informed of instances in which laws allowing the prevention of "anti-national" activities have been used to ban human rights organizations or impose limitations on the independence of professional associations.

23. Other limitations on the right to freedom of association have, for example, involved action by security forces to prevent meetings between members of human rights organizations. National security arguments, based on legislative provisions, have been used by security forces to interrupt or prevent human rights defender gatherings, in some instances through force and violence leading to injury among defenders. In other instances, groups opposed to the human rights work of the defenders in question and affiliated with the State have been used as a proxy force to violently disperse human rights defenders. These incidents are often marked by the presence of police who take no action against those using violence.

4. The right to protest and freedom of assembly

24. Exercising the right to protest against public policy or State action is an effective mode of participation in a democracy. The Declaration on human rights defenders acknowledges the legitimacy of participation in peaceful activities to protest against violations of human rights, and recognizes freedom of assembly as an important element of this right. Those engaged in such activities are entitled to effective protection under national law against any adverse action by the State.[8]

25. Restrictions imposed on freedom of assembly have been liberally applied to prohibit or disrupt peaceful human rights assemblies, frequently on the pretext of maintenance of public order, and increasingly relying on counter-terrorism legislation, arguments and mechanisms. Defenders have been prosecuted under laws that allow the executive to arbitrarily ban public gatherings generally, or at specified locations. Farmers have been prosecuted in anti-terrorist courts for protesting attempts by State security forces to evict them from land. Villagers demonstrating against mega-projects that threaten their environment and livelihood have been charged with conducting anti-State activities. Peace activists and anti-war protesters have been maligned and threatened with prosecution for defying travel restrictions. The worst affected are pro-democracy activists and those organizing or taking part in peaceful public action asserting their right to independence or self-determination. They have become the most susceptible to the use of security laws and anti-terrorism measures by States. The Special Representative notes with concern that

these trends are now noticeable even in countries where the political or institutional arrangements are not implicitly or explicitly undemocratic.

5. Activities of State intelligence structures and surveillance of human rights defenders

26. Security-related laws and regulations have frequently diluted guarantees of the right to privacy that are otherwise normally available under the law. However, the more recent anti-terrorism laws in some countries have given law enforcement and intelligence agencies exceptional powers of surveillance, collection and processing of personal data, and search and seizure. In some instances these laws allow surveillance of organizations, regardless of the nature of their activity and without any suspicion of wrongdoing. Human rights groups, lawyers and others have raised concerns over several issues that strike at the legitimacy or justification of the powers granted under these laws.[h] In the limited context of the present report, however, the Special Representative's focus is limited to concerns about how defenders and their work are affected by the policies and practices used by surveillance structures, under the cover of security legislation.

27. Human rights defenders are the first to report and question practices that violate human rights. Governments are increasingly reacting to this by undermining the credibility of these defenders, branding them as subversives, "anti-national" and enemies of the State. State intelligence structures are used to harass defenders, to interfere with their efforts to seek and disseminate information on violations and to prevent any action to draw public attention to these violations. Communicating human rights abuses to concerned international agencies has become a particular reason for surveillance of and crackdowns against defenders. Many have been subjected to investigation and interrogation and information about them has been placed in intelligence files, reportedly for defending the right to due process and fair trial, offering legal defence or demanding conditions of detention compatible with human rights standards for those under suspicion of terrorism or other security-related offences.

28. Defenders have found themselves placed on blacklists maintained by State security and intelligence apparatuses. Frequently, the actual existence of such lists is not formally admitted and they do not appear to have any clear status in law, making it difficult for defenders to confirm that they are on a list and to challenge the inclusion of a name, whether their own or someone else's. The criteria used to set up the lists (where precise criteria exist) are opaque and often unknown to the defenders listed. The lack of transparency in the use of such lists and the limited possibility of independent review of the names included in them are such that they are easily used to target human rights defenders for reasons wholly different from the alleged concern with security or counter-terrorism. The Special Representative has received reports that allege the deliberate leaking of intelligence information to non-State elements, which has been directly responsible for harm to human rights defenders at the hands of these elements.

6. Arrest, pre-trial detention and prosecution

29. Arrest, preventive detention and prosecution under security legislation provisions are often conducted in a manner that limits defenders' access to persons

arrested and detained under such legislation and to the information justifying their arrest and on the basis of which they will be prosecuted.

30. Provisions for the detention of people without a warrant or eventual trial are a common feature in much security legislation. Under certain circumstances security legislation does not impose any obligation on the State to publicly specify the charges under which a person is being held. Preventive detention measures allow authorities to detain individuals suspected of being a threat to public order or State security for long periods without intent to prosecute them for criminal offences. Evidence justifying the arrest of an individual on the basis of security provisions can sometimes be kept wholly or partly secret. These conditions make it extremely difficult for defenders to verify the legality of the arrest and respect for relevant human rights related to conditions of detention, or to ensure an adequate legal defence.[i]

31. Security legislation has also been misused to arrest and detain human rights defenders themselves, precisely because of the limited opportunities for monitoring and accountability. Information received by the Special Representative indicates that such legislation has been used in the arrest and detention of, among others, trade unionists, student leaders, political activists, members of religious groups, academics, lawyers, journalists and non-governmental organization workers in response to their human rights activities.

7. Right to habeas corpus

32. In a context in which the access and role of human rights defenders in monitoring arrests and detention under security legislation is restricted, it is particularly important that an independent court be allowed to rule on the legality of detention. The Special Representative notes General Comment No. 9 of the Human Rights Committee, which states that in order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of the detention must not be diminished by a State party's decision to derogate from the Covenant. In addition, in its resolution 1992/35, "Habeas corpus", the Commission on Human Rights called upon States to maintain the right to habeas corpus even under circumstances of a state of exception. The Special Representative notes that many examples of security legislation contain provisions restricting the right to habeas corpus. It goes without saying that judicial review is of particular importance in instances where human rights defenders are themselves arrested and detained on security-related charges.

8. Access to a lawyer

33. Article 9, paragraph 3, of the Declaration states, "Everyone has the right, individually and in association with others, ... to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms."[j] The Special Representative notes with concern that security legislation often allows for a person to be detained for lengthy periods without access to a lawyer. Aside from the absence of professional legal counsel, such conditions prevent any independent monitoring of respect for minimum conditions of detention and create situations in which detainees can be vulnerable to torture. The Special Representative has received information on the arrest and detention of numerous lawyers defending persons on security-related charges,

allegedly as retaliation for exposing human rights violations against their clients and attempting to take legal recourse against the authorities responsible.

9. Specialized courts and procedures

34. Some security legislation establishes procedures allowing for the use of specialized courts to try cases involving terrorism and certain other security cases. The stated objective of these courts is to allow the State to prosecute individuals suspected of terrorism in conditions that will not prejudice the State's capacity to continue to dismantle terrorist networks (by publicly divulging information and sources), as well as to protect judges and others from repercussions. A common hallmark of such courts is secrecy, combined with a truncation of the normal guarantees enjoyed by defendants in criminal court proceedings. In particular, requirements as to maximum periods of preventive detention, conditions of detention, access to legal counsel and evidence are less stringent. For example, in some instances, hearsay and secondary evidence that would be rejected in regular proceedings are admissible as evidence before these courts. Some courts are entirely staffed by military personnel, with prosecution lawyers, defence lawyers and judges all drawn from the military.

35. These courts and procedures are of concern to human rights defenders primarily because their access to defendants is greatly reduced and because of the denial of opportunities to monitor trials held in camera. Defenders themselves have, in a few instances, also been brought before such courts.

10. Security forces — delegation of judicial powers and immunity

36. Under some security legislation, certain judicial powers have been delegated to security forces. In particular, security legislation provides security forces with much greater scope to obtain information and make arrests without judicial review, dispensing with such requirements as the signing of an arrest warrant by a judge. Some security legislation allows members of security forces to benefit from immunity for actions taken "in good faith" in the context of counter-terrorist activities.

37. As indicated in the Special Representative's past reports, and according to the information provided to her, security forces — including police, military, paramilitary and similar forces — are the most common direct perpetrators of human rights violations against defenders. The Special Representative is apprehensive about the security of human rights defenders in an environment that increases the powers of security forces while simultaneously limiting oversight and monitoring. These apprehensions are founded on the awareness of the expanding role of the military and other security forces in law enforcement, which brings them into direct contact with defenders monitoring State practices and campaigning for respect for human rights and accountability for violations.

11. United Nation legislation and the protection of human rights defenders

38. In the context of United Nations security legislation, the Special Representative limits her focus to resolutions of the Security Council that have come about in response to recent terrorist attacks and that have specifically called for action by States in the domain of security and counter-terrorism. As mentioned in section II.B above, the link between this United Nations legislation and obstructions

to the work of human rights defenders is based on the assumption that States have been guided in their approach to strengthening national security legislation by referring to these statements of the will of the United Nations. The extent to which these resolutions calling for State action on security and counter-terrorism also refer to the State obligation to respect and protect human rights essential to the work and safety of defenders can be significant in ensuring that resultant national security legislation adopted by States is drafted and implemented in such a way as to protect defenders and their work.

39. The Security Council has adopted a series of resolutions on security and counter-terrorism, including resolutions 1368 (2001) of 12 September 2001, 1373 (2001) of 28 September 2001, 1377 (2001) of 12 November 2001, 1438 (2002) of 14 October 2002 and 1440 (2002) of 24 October 2002. Several resolutions use strong language with regard to addressing terrorism, including reference to the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts. The eighth preambular paragraph of resolution 1373 (2001) includes the phrase, "Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress ... the financing and preparation of any acts of terrorism".

40. References to human rights or other language that could be considered to emphasize the protection of human rights defenders and their role are, however, limited. The first preambular paragraph of resolution 1368 (2001) reaffirms "the principles and purposes of the Charter of the United Nations" but makes no more direct reference to human rights standards and obligations. The eighth preambular paragraph of resolution 1373 (2001) notes States' obligation to limit their counter-terrorism efforts to "all lawful means", but the text makes just one direct reference to human rights, and this is limited to the context of claims for refugee status.

41. Resolution 1373 (2001) established the Counter-Terrorism Committee of the Security Council, whose role in monitoring States' implementation of that resolution could become significant in ensuring respect for the Declaration on human rights defenders in the enforcement, implementation and application of security legislation or anti-terrorism measures. Monitoring the conformity of counter-terrorism measures with human rights standards is clearly outside the mandate of that Committee. The Committee has, however, indicated that it will consider the human rights implications of anti-terrorism measures and will keep itself informed of human rights concerns through contacts developed with the Office of the United Nations High Commissioner for Human Rights (OHCHR). It has also indicated its openness to non-governmental organizations bringing their concerns to its attention. The extent to which these expectations will be met in the work of the Committee and what level of priority human rights concerns will receive in the examination of the reports submitted by Governments with respect to their compliance with resolution 1373 (2001) cannot yet be determined with certainty.

42. The Special Representative would like to draw attention to concerns expressed by United Nations human rights mechanisms with regard to the adverse effects of certain counter-terrorism measures on the preservation of and respect for human rights norms. In a joint statement issued on 29 November 2001, the United Nations High Commissioner for Human Rights, the Council of Europe and the Organization for Security and Cooperation in Europe urged States to strike a fair balance in their responses to terrorism between legitimate national security concerns and

fundamental freedoms. They also stressed the non-derogable nature of certain rights. On 10 December 2002, in a joint expression of concern on this issue the Special Representative and 16 United Nations special rapporteurs pointed out the increased vulnerability of human rights defenders, migrants, asylum seekers, refugees, religious minorities, political activists and the media.

43. The remarks of the Secretary-General in his address to the Security Council meeting on counter-terrorism on 18 January 2002 are particularly significant in this respect. Cautioning Governments against measures that unduly curtail human rights, or give others a pretext to do so, he stated, "We should all be clear that there is no trade-off between effective action against terrorism and the protection of human rights ... I believe that, in the long term, we shall find that human rights, along with democracy and social justice, are one of the best prophylactics against terrorism."[8] He also designated human rights as a key priority, among others, the sacrifice of which would be self-defeating for the efforts to prevent, condemn and punish acts of terrorism.

III. The role and situation of human rights defenders in emergencies

A. Emergencies in the context of the defence of human rights

44. The present report does not attempt to provide any formal definition of emergencies. The Special Representative here uses the word "emergency" to refer to political, social or economic conditions under which there is a departure from the normal legal regime, and the limits of State authority are, de jure or de facto, expanded beyond the scope of authority ordinarily prescribed. Her focus on emergencies includes, but is not limited to, formally declared states of emergency.

45. It is in the context of armed conflicts that conditions constituting an emergency have most commonly occurred. Emergencies characterized by the conditions set out above have also appeared in situations that are below the threshold of a raging conflict, but in which there is resort to exceptions that raise fundamental concerns regarding human rights. Emergencies may occur in one particular part of a country or engulf a whole State. Extrajudicial killings, disappearances, kidnappings, torture, rape, arbitrary arrest and detention, internal displacement, vast numbers of refugees and the recruitment of children by armed actors are among the types of human rights concerns that are common to emergency situations. These circumstances are often accompanied by little or no official investigation into human rights violations committed and subsequent impunity for these acts. The full range of civil, cultural, economic, political and social rights is frequently at risk.

46. Some of the emergencies of concern to the Special Representative have been on the agenda of the Security Council within the past three years in the context of its focus on international peace and security. The 2002 and 2003 agendas of the Commission on Human Rights also included the consideration of several States experiencing conditions corresponding to the Special Representative's focus on emergencies. The Special Representative notes, however, that while some emergencies of concern to her have remained off the agendas of the Security Council and the Commission on Human Rights, this should not obscure the fact that

the role and situation of human rights defenders in the States involved deserve urgent attention.

B. The role of defenders in emergencies and the violations they face

47. As emergencies occur and develop, the human rights problems common to these situations are often so serious that the presence and action of defenders is urgently required. In an environment of widespread human rights abuses and lack of clarity as to how, when and by whom abuses are being committed, the role of human rights defenders is at its most crucial. By engaging in the defence of human rights through a variety of actions, defenders endeavour to preserve these rights despite conditions that make them most vulnerable to erosion. More significantly, human rights defenders contribute to limiting the scale of human rights violations and their impact on people affected by emergency situations.

48. Defenders can monitor an overall situation, rapidly investigate allegations of possible violations and report their conclusions, providing a measure of accountability. They are able to provide support to victims and persons who are trying to escape violence. They provide emergency shelter, food, water and medical care to help a population survive a period of emergency. Their presence can help to calm situations and, at times, to prevent human rights violations from being committed. Their work can help to bring these situations quickly to an end and ensure a measure of justice for those who nevertheless suffer violations. They also provide the international community with some independent verification of what is actually happening within an emergency situation, informing the process of taking decisions on possible actions. This role can be a crucial support not only for the victims of human rights violations and the State authorities most immediately concerned, but also for the Security Council and other bodies.

49. The Special Representative is deeply concerned that, in many current and recent emergencies, when they are needed most, defenders are often prevented from conducting their human rights work. In addition, where defenders have tried to fulfil their role they have themselves been vigorously targeted in what amounts to an actual policy of silencing them. Legitimate limits may be placed on the exercise of rights in a state of emergency. However, human rights activity in itself cannot be suspended, whatever the exigencies of a situation may be.

50. In many States undergoing emergencies, security forces exercise, officially or de facto, special authority to conduct arrests and detentions outside the bounds of normal procedures and human rights guarantees. A Government may, in addition, have assumed authority under the rules of a state of emergency for the derogation of some of its international human rights obligations. Further, the negative impacts of national security legislation on defenders are amplified in situations of emergency.

1. Restrictions on access

51. To be effective, human rights defenders require access to civilian populations in areas of emergency. They must be allowed to travel in the region, to meet with civilians and belligerents, to have access to camps for internally displaced persons and to enter and inspect places of detention. They must be able to gather the information they need and to communicate it to the outside world. The Declaration

on human rights defenders ensures the right of defenders to conduct these types of actions.

52. In practice, the Special Representative has observed that as emergencies develop, defenders have decreasing access to places and people they need to visit to perform their human rights role. Where actual armed conflict is present, limitations on access are partly the result of the conflict itself. However, in both conflict and non-conflict emergencies, it is clear that deliberate and concerted efforts are made to limit the access of human rights defenders and to prevent their presence altogether.

53. International human rights defenders have often been denied visas to enter a country where an emergency is occurring. Where they have been able to obtain visas, bureaucratic barriers have been used on many occasions to prevent their access to emergency areas within a State where human rights violations are thought to be occurring. Where access has been eventually provided, it is often long after the alleged violations occurred, making the task of collecting information much more difficult.

54. Defenders have been prevented from speaking directly with witnesses and victims of violations through denial of access to camps for internally displaced persons and places of detention, through refusal to allow questioning to take place in private or through direct intimidation of the local population with which defenders wish to speak. By way of example, in more than one State authorities have dressed prison guards as detainees and placed them among a detainee population while human rights monitoring missions were being conducted, using the intimidating presence of these officials to discourage genuine detainees from bearing witness to violations.

55. These and other practices have been used against defenders working in both national and international human rights non-governmental organizations, as well as in humanitarian and development organizations. United Nations human rights officials have faced the same problems, their mandates providing for minimum conditions of access to places, persons and documents not always having been respected.

2. Human rights defenders as targeted victims of violations

56. In parallel with limitations on access for defenders in emergency situations, they have themselves become the deliberate targets of human rights violations. They have been killed, "disappeared", tortured, targeted by death threats and intimidation, subjected to arbitrary arrest and detention and deported. There are many examples of defenders being publicly accused by State authorities of being allied with opposition groups, or accused by opposition groups of being allied with the State. In some instances, State authorities or rebel group leaders have made statements to this effect on radio and television, following which the defenders in question have been victims of attacks and threats.

57. When denying access to a region, State authorities or armed groups sometimes argue that, because of conditions prevailing in the region, they are unable to guarantee the security of defenders. When, subsequently, a defender is killed or disappears, authorities have renounced any responsibility. In some situations such attacks may be beyond the control of belligerents. However, too many defenders have clearly suffered harm because they expressed or made public their concerns

regarding human rights violations occurring in these areas. These circumstances give credibility to allegations that security arguments are used to obstruct the work of defenders and then as a cover for deliberate targeting of defenders. The Special Representative is well aware that in many situations of conflict human rights defenders have been harmed by non-State elements that may not be under the overt or covert control of the State. Nevertheless, the responsibility for creating conditions necessary for the enjoyment of rights, and for taking legal, administrative and other steps to ensure that the rights referred to in the Declaration are effectively guaranteed, lies primarily with the State. While impunity for human rights violations at any time has become a serious human rights issue, in situations of emergency impunity is more prevalent and of greater potential harm to the promotion of human rights. The Special Representative deeply regrets the high rate of impunity for violations of the rights of defenders.

58. International human rights defenders have suffered from all of the acts described above, in the last year alone. However, national defenders and others from the same region are the most vulnerable. The Special Representative draws two related conclusions from this. Firstly, the international status of human rights defenders provides a certain level of protection and encourages somewhat better respect for the Declaration with regard to their work, although that respect remains far below the standard required. Secondly, State authorities and non-State actors are much readier to violate the Declaration with regard to their own nationals, emphasizing the need for a greater focus of international attention on the situation of national human rights defenders.

C. The importance to the international community of the work of human rights defenders in emergency situations

59. A very large proportion of the Security Council's time is occupied with considering emergencies affecting international peace and security, most notably those involving armed conflict. Human rights violations are almost invariably a root cause as well as a consequence of these armed conflicts, and impunity for violations committed perpetuates both the violations and the conflicts themselves. It follows that any action to address human rights violations at their outset, to limit their impact and to rein in impunity can be central to preventing or at least limiting the extent of emergencies. Human rights defenders contribute in all of these areas. National defenders are at work within a society before any emergency begins, and they are often the most committed to preventing violations and putting an end to them. They have intimate knowledge of the local context and, with suitable international support, can draw attention to human rights concerns as they emerge.

60. The work of defenders is drawn upon to inform the Security Council of ongoing situations and provides support for United Nations actions to address concerns. One can argue that it is partly through the palliative work of defenders that many countries with near-emergency situations have remained below the threshold of the Council's focus and so off its agenda, freeing up time to address the most urgent situations. Defenders in emergencies help to ensure that the monitoring of United Nations human rights mechanisms — including special rapporteurs and treaty bodies — can continue, even when emergency conditions last for many years. Based outside the country for which they have a mandate, country-specific special rapporteurs of the Commission on Human Rights would have no source of

information other than that provided by the State if it were not for the support of defenders. Indeed, it is often upon the basis of information gathered by defenders that the Commission is able to determine the need to actually establish a special rapporteur mandate. As the International Criminal Court becomes established it will rely, in part, on human rights defenders present in emergency situations to gather first-hand information and to provide testimony. One can argue with conviction that a link between defenders and the Court will ultimately have a powerful preventive effect with regard to human rights violations in emergencies.

61. The work of human rights defenders is fundamental to supporting the goals of the international community and the United Nations in emergencies. Any restriction on defenders and their work will also, ultimately, have a negative impact on the goals of the international community.

IV. Interpreting the Declaration on human rights defenders in the light of security legislation and emergencies

62. The Special Representative is well aware of the tensions that are emerging between the obligations to provide security and preserve respect for human rights, and she notes the importance of both obligations and their common objectives. Based on the examination of numerous cases that have been brought to her attention, it is her considered opinion that the international community needs to develop and observe a common approach that does not create a contradiction between the several objectives of the United Nations. The interpretation and application of the various instruments of the United Nations must, likewise, promote congruity in the functioning of the various bodies of the Organization. The progress that the United Nations has achieved in setting standards in the field of human rights may be reversed by the intrusion of ambiguity and uncertainty in the universal application of human rights standards within the United Nations system itself.

63. The Special Representative seeks to discharge the mandate entrusted to her of promoting the implementation of the Declaration on human rights defenders on the basis of a clearly stated understanding of the provisions of the Declaration and the scope of their application. She is fully conscious that the Declaration is not an isolated instrument. Its implementation must draw support from the body of international law and human rights norms, and at the same time resolve any perceived contradictions within this corpus of norms without undermining any part of it.

64. The Special Representative understands that the primary significance of the Declaration lies in its provision of legitimacy and protection to certain activities that protect and promote universally recognized human rights and fundamental freedoms. The central focus of the Declaration is not on the recognition of these rights, but on their reiteration and the protection of activities for their promotion. It may also be recalled that the Declaration extends protection to persons only to the extent of their engagement in these activities. These are important distinctions to keep in mind when determining the relevance of any arguments regarding the scope of derogation of, and limitations and restrictions on, rights in the emergency or security context. For instance, even if some rights or freedoms are restricted in a situation of emergency, or under security legislation, or because of any other requirements, activity for the monitoring of these rights can be neither restricted nor

suspended. Any understanding of article 17 of the Declaration must not ignore this aspect.

65. The Special Representative also draws attention to article 18 of the Declaration, which imposes a responsibility on civil society for "safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes". Human rights defenders, from civil society, cannot discharge this responsibility effectively if they are not able to play their expected role at times when the values of democracy and human rights are most vulnerable to erosion and institutions and processes are at greater risk of disintegration. It would be contrary to the spirit of the Declaration if restrictions placed on any activities of human rights defenders conflicted with their responsibilities under the Declaration, including activities undertaken to advocate the cause of human rights and democracy; to question measures that violate human rights; to aid victims of human rights abuses; to call for the accountability of those responsible for violations; and to strengthen institutions of democracy and encourage their response to human rights violations.

66. It is the Special Representative's deep conviction that derogations from and exceptions to applicable human rights standards, including the Declaration, should be required to meet a higher standard when they are applied to human rights defenders. This should be the case with regard to security legislation. It should be even more rigorously the case in the context of emergencies during which the most atrocious and large-scale human rights violations are committed. At these times of great risk to human rights, it is essential that there be some form of independent monitoring and accounting of the actions of the protagonists in the context of threats to security and emergencies. The Special Representative considers that it would be contrary to the spirit of international human rights standards to argue that at these same moments of greater risk the right to defend human rights can be legally stifled.

67. She therefore considers that under the Declaration (and with particular reference to its article 17), defenders can be subject to limitations only with regard to statements or actions that, by definition, are incompatible with the status of human rights defender. A most obvious excluding factor would be participation in or advocacy of violence. The interpretation of the provisions of article 19 leads to the same conclusion.

68. Finally, the Special Representative takes guidance from the preambular part of the Declaration, the fifth paragraph of which recognizes "the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, ... mindful that the absence of international peace and security does not excuse non-compliance".

V. Conclusions and recommendations

69. **Security legislation and emergencies represent contexts in which human rights work is increasingly restricted and defenders are targeted. Both are used as a smokescreen to allow dereliction from human rights obligations and the persecution of defenders. These acts harm the genuine struggle to prevent and end terrorism. They also perpetuate emergencies by isolating those actors that are most committed and often best placed to bring emergencies to an end. Above all, the restriction under security legislation and in emergencies of**

activities that the Declaration seeks to protect amounts to a severe violation of the commitments expressed by the United Nations when the instrument was adopted in 1999. Restrictions on defenders ultimately damage the goals of the United Nations Member States and the Organization. The Special Representative has formulated the recommendations below as an initial and minimum response.

A. States

70. States should ensure that security legislation is not applied against human rights defenders as a means to prevent their human rights work. Derogations from human rights standards and the granting of additional powers to security forces should not hinder the work of defenders or result in their being targeted.

71. When human rights defenders are arrested, detained and/or prosecuted under security legislation, the process should be fully transparent. The charges on which the arrest and detention are based should be made public and explained in a sufficiently complete manner that the veracity of their substance can be independently verified. Related human rights guarantees — including access to a lawyer, maximum periods of preventive detention, judicial oversight, etc. — should be fully respected, irrespective of the security risks with which the defender is charged.

72. States responding to an emergency situation within their jurisdiction should make a particular effort to ensure that the Declaration's provisions are upheld. Local civilian authorities involved in emergencies should be made aware of their obligations under the Declaration on human rights defenders and be required to apply the Declaration. The same principle should be applied to the military or any other armed force active within an emergency zone.

73. The Special Representative recalls the duty of States to effectively protect human rights defenders under their national laws, as stipulated in article 9 of the Declaration. She notes that States bear a related duty to call to account those responsible for harm to defenders and attempting to obstruct their work. In the light of article 20 of the Declaration, this duty should be seen as a significant contribution to the fight against impunity, and the Special Representative considers that lapses on the part of a State in this respect could be interpreted as support for or promotion of activities of perpetrators of human rights violations. Effective remedies against human rights violations must be provided through adequate opportunities for complaint; review of such complaints in a public hearing before an independent, impartial and competent judicial or other authority established by law; and the obtention from such an authority of a decision in accordance with the law, providing redress.

74. With reference to the provisions of the Declaration referred to in previous paragraphs, the Special Representative considers that States should seek to ensure that, when implementing security legislation, they guarantee an opportunity for human rights defenders to effectively monitor its application, the relevant court proceedings and the actual physical integrity of persons targeted by such legislation. For example, in the context of the arrest and detention of a person under security legislation, defenders should, at a minimum, have regular access to the detainee and to basic information on the

substance of the charges on which the detainee is held. These two conditions are the absolute minimum for defenders to monitor the most fundamental human rights involved in the application of security legislation.

B. The United Nations

75. Noting the essential role of human rights defenders in the context of counter-terrorism and emergencies, and that the active presence of human rights defenders can serve as an early warning of a deteriorating situation, the Security Council may wish to consider: (a) when drafting resolutions on security and counter-terrorism, including in those texts a reference to the Declaration and/or references to human rights standards that contribute to ensuring the role and protection of defenders; and (b) ways in which it can obtain additional country-specific information on the situation of defenders in the context of counter-terrorism activities and emergencies, from sources including OHCHR and the Special Representative on Human Rights Defenders.

76. The Security Council Counter-Terrorism Committee may wish: (a) in its deliberations, to emphasize the very important role of human rights defenders in countering terrorism and in monitoring States' implementation of security legislation in respect of human rights standards; and (b) to give particular consideration to examining the role and situation of human rights defenders in countries submitting their reports on the implementation of resolution 1373 (2001).

77. OHCHR could consider the publication of guidelines indicating particular human rights standards that should be referred to and protected by domestic security laws, and which would include supportive references to the role and protection of defenders. The Office should also make efforts to disseminate its fact sheet on human rights defenders.

78. OHCHR and the Department of Political Affairs may wish to request their country desk officers to take particular note of the situation of human rights defenders in emergency zones and to prominently include such information in their analyses and briefings.

79. Other United Nations departments, offices, programmes and agencies having a role in emergency situations should consider ways in which, acting within their mandates, they can provide support to human rights defenders. These United Nations entities may wish to give particular attention to those defenders working on issues that are central to the United Nations entities' own mandates — for example, rights to housing, health, education and development, the rights of children and women, or access to vulnerable populations. OHCHR could provide support in defining a suitable strategy for such action.

80. The Special Representative proposes that instances in which domestic security legislation is applied against human rights defenders be documented in order to gain a better understanding of what measures would be needed to eliminate risks to human rights defenders. Similar documentation could be undertaken to establish risks confronted by defenders in emergency situations.

States, non-governmental organizations, the United Nations and the Special Representative herself can contribute to this documentation.

C. Regional actions

81. **Regional organizations should give careful attention to any deterioration in the situation of defenders in emergencies within the region and take appropriate action to draw problems to the attention of States concerned and to international mechanisms.**

82. **Regional intergovernmental organizations having a human rights mandate should establish a human rights defenders capacity and include within its remit a focus on and periodical review of security legislation adopted and emergency powers exercised by Governments. The progress made by the Inter-American Commission on Human Rights with its creation of a Special Unit for Human Rights Defenders could serve as an example for efforts that can be undertaken by other organizations.**

D. The media

83. **The media, when reporting on emergencies, should give attention to the role and situation of defenders and the human rights information they gather. Many media sources already perform this task; however, the practice could be more widespread and more systematic.**

E. Human rights defenders

84. **Human rights defenders active in addressing human rights concerns in emergency situations should ensure that their work meets the standard of responsibility required by the Declaration on human rights defenders. The credibility of their work has become even more significant in the current political context. This requires an even higher standard of accuracy, transparency and impartiality in the work of human rights defenders. The documentation and reporting of human rights abuses related to security and anti-terrorism laws, policies and practices becomes critical for a realistic assessment of the situation and its rectification. Human rights organizations and defenders must undertake this task, especially at the local level.**

85. **Defenders should continue to make every effort to comment during the drafting of security legislation and to monitor the implementation of existing legislation, including by: (a) making recommendations as to the human rights references that should be contained in such legislation; (b) analysing the human rights impact of such legislation; and (c) publicly reporting on their findings.**

86. **Defenders should make the best possible use of the Declaration, promoting and disseminating the text among authorities, the public and other defenders. Defenders may refer to the OHCHR fact sheet on human rights defenders as a tool for general dissemination of the Declaration.**

Notes

[a] E/CN.4/2001/94, E/CN.4/2002/106 and Add.1 and 2, and E/CN.4/2003/104 and Add.1-4. The 2003 report on communications between the Special Representative and States with regard to specific cases is contained in E/CN.4/2003/104/Add.1.

[b] E/CN.4/2002/106/Add.1.

[c] E/CN.4/2002/106/Add.2.

[d] E/CN.4/2003/104/Add.2.

[e] General Assembly resolution 53/144, annex.

[f] Including, articles 6, 7 and 8 of the Declaration on human rights defenders; articles 18 and 19 of the International Covenant on Civil and Political Rights; article 9 of the African Charter of Human and People's Rights; article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; and article 13 of the American Convention on Human Rights.

[g] See articles 5 and 12 of the Declaration on human rights defenders.

[h] These concerns reflect the apparent incompatibility of some security legislation provisions with, inter alia, article 17 of the Declaration on human rights defenders, article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights.

[i] See article 9 of the Declaration on human rights defenders.

[j] See also article 11 of the Declaration on human rights defenders.

[k] See S/PV.4453.